104TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
*2d Session* } { 104–454

# LAND DISPOSAL PROGRAM FLEXIBILITY ACT OF 1995

JANUARY 30, 1996.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BLILEY, from the Committee on Commerce, submitted the following

## R E P O R T

together with

## DISSENTING VIEWS

[To accompany H.R. 2036]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, to whom was referred the bill (H.R. 2036) to amend the Solid Waste Disposal Act to make certain adjustments in the land disposal program to provide needed flexibility, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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20–006

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Land Disposal Program Flexibility Act of 1995".

**SEC. 2. LAND DISPOSAL BAN.**

Section 3004(g) of the Solid Waste Disposal Act (42 U.S.C. 6924(g)) is amended by adding the following after paragraph (6):

"(7) Solid waste identified as hazardous based on one or more characteristics alone shall not be subject to this subsection, any prohibitions under subsection (d), (e), or (f), or any requirement (other than any applicable specific method of treatment) promulgated under subsection (m) if such waste—

"(A)(i) is managed in a treatment system which subsequently discharges to waters of the United States pursuant to a permit issued under section 402 of the Clean Water Act (33 U.S.C. 1342); (ii) treated for the purposes of the pretreatment requirements of section 307 of the Clean Water Act (33 U.S.C. 1317); (iii) or managed in a zero discharge system that, prior to any permanent land disposal, engages in Clean Water Act-equivalent treatment as determined by the Administrator;

"(B) no longer exhibits a hazardous characteristic prior to management in any land-based solid waste management unit;

"(C) has met any applicable specific method of treatment promulgated by the Administrator under section 3004(m) (42 U.S.C. 6924(m)); and

"(D) would not generate toxic gases, vapors, or fumes due to the presence of cyanide at the point of generation when exposed to pH conditions between 2 and 12.5.

"(8) Not later than 5 years after the date of enactment of this paragraph, the Administrator shall complete a study of hazardous wastes managed pursuant to paragraph (7) to characterize the risks to human health or the environment associated with such management. In conducting the study, the Administrator shall evaluate the extent to which the risks are adequately addressed under existing State or Federal programs and whether unaddressed risks could be better addressed under such Federal laws or programs. Upon completion of such study or upon receipt of additional information, and as necessary to protect human health and the environment, the Administrator may, after notice and opportunity for comment, impose additional requirements, including requirements under section 3004(m)(1) or defer management of such wastes to other State or Federal programs or authorities. Compliance with any treatment standards promulgated pursuant to section 3004(m)(1) may be determined either prior to management in, or after discharge from, a land-based unit as part of a treatment system specified in subparagraph (A) of paragraph (7). Nothing in this paragraph shall be construed to modify, supplement, or otherwise affect the application or authority of any other Federal law or the standards applicable under any other Federal law.

"(9) Solid waste identified as hazardous based on one or more characteristics alone shall not be subject to this subsection, any prohibition under subsection (d), (e), or (f), or any requirement promulgated under subsection (m) of this section if the waste no longer exhibits a hazardous characteristic at the point of injection in any Class I injunction well regulated under section 1422 of title XIV of the Public Health Service Act (42 U.S.C. 300h–1).".

**SEC. 3. GROUND WATER MONITORING.**

(a) AMENDMENT OF SOLID WASTE DISPOSAL ACT.—Section 4010(c) of the Solid Waste Disposal Act (42 U.S.C. 6949a(c)) is amended as follows:

(1) By striking "CRITERIA.—Not later" and inserting the following: "CRITERIA.—

"(1) IN GENERAL.—Not later".

(2) By adding at the end the following new paragraphs:

"(2) ADDITIONAL REVISIONS.—Subject to paragraph (3), the requirements of the criteria described in paragraph (1) relating to ground water monitoring shall not apply to an owner or operator of a new municipal solid waste landfill unit, an existing municipal solid waste landfill unit, or a lateral expansion of a municipal solid waste landfill unit, that disposes of less than 20 tons of municipal solid waste daily, based on an annual average, if—

"(A) there is no evidence of ground water contamination from the municipal solid waste landfill unit or expansion; and

"(B) the municipal solid waste landfill unit or expansion serves—

"(i) a community that experiences an annual interruption of at least 3 consecutive months of surface transportation that prevents access to a regional waste management facility; or

"(ii) a community that has no practicable waste management alternative and the landfill unit is located in an area that annually receives less than or equal to 25 inches of precipitation.

"(3) PROTECTION OF GROUND WATER RESOURCES.—

"(A) MONITORING REQUIREMENT.—A State may require ground water monitoring of a solid waste landfill unit that would otherwise be exempt under paragraph (2) if necessary to protect ground water resources and ensure compliance with a State ground water protection plan, where applicable.

"(B) METHODS.—If a State requires ground water monitoring of a solid waste landfill unit under subparagraph (A), the State may allow the use of a method other than the use of ground water monitoring wells to detect a release of contamination from the unit.

"(C) CORRECTIVE ACTION.—If a State finds a release from a solid waste landfill unit, the State shall require corrective action as appropriate.

"(4) NO-MIGRATION EXEMPTION.—

"(A) IN GENERAL.—Ground water monitoring requirements may be suspended by the Director of an approved State for a landfill operator if the operator demonstrates that there is no potential for migration of hazardous constituents from the unit to the uppermost aquifer during the active life of the unit and the post-closure care period.

"(B) CERTIFICATION.—A demonstration under subparagraph (A) shall be certified by a qualified ground-water scientist and approved by the Director of an approved State.

"(C) GUIDANCE.—Not later than 6 months after the date of enactment of this paragraph, the Administrator shall issue a guidance document to facilitate small community use of the no migration exemption under this paragraph.".

(b) REINSTATEMENT OF REGULATORY EXEMPTION.—It is the intent of section 4010(c)(2) of the Solid Waste Disposal Act, as added by subsection (a), to immediately reinstate subpart E of part 258 of title 40, Code of Federal Regulations, as added by the final rule published at 56 Federal Register 50798 on October 9, 1991.

**SEC. 4. TECHNICAL CORRECTIONS TO SOLID WASTE DISPOSAL ACT.**

The Solid Waste Disposal Act is amended as follows:

(1) In section 3001(d)(5), by striking "under section 3001" and inserting "under this section".

(2) By inserting a semicolon at the end of section 3004(q)(1)(C).

(3) In section 3004(g), by striking "subparagraph (A) through (C)" in paragraph (5) and inserting "subparagraphs (A) through (C)".

(4) In section 3004(r)(2)(C), by striking "pertroleum-derived" and inserting "petroleum-derived".

(5) In section 3004(r)(3), by inserting after "Standard" the word "Industrial".

(6) In section 3005(a), by striking "polycholorinated" and inserting "polychlorinated".

(7) In section 3005(e)(1), by inserting a comma at the end of subparagraph (C).

(8) In section 4007(a), by striking "4003" in paragraphs (1) and (2)(A) and inserting "4003(a)".

## PURPOSE AND SUMMARY

H.R. 2036 would provide authority to the Environmental Protection Agency (EPA) to issue two regulations that have been overturned by court decisions. The first case concerns the land disposal restrictions under sections 3004(g) and (m) of the Solid Waste Disposal Act (SWDA). The second case involves ground water monitoring requirements at municipal landfills under Subtitle D of SWDA. In each case, EPA sought to promulgate a flexible, risk-based approach to the regulation of the land disposal of wastes. In each case, however, the court found that EPA did not have statutory au-

thority to take such an approach and directed the Agency to promulgate more prescriptive regulations.

## BACKGROUND AND NEED FOR LEGISLATION

### A. THE LAND DISPOSAL RESTRICTION RULE

The 1984 amendments to SWDA prohibit the land disposal of hazardous wastes with two significant options for legal disposal: (1) meet pretreatment standards; or (2) place waste into a unit which has an approved petition certifying that there will be no migration of hazardous constituents for as long as the waste remains hazardous.

Under SWDA, a waste is deemed to be a hazardous waste if it exhibits certain hazardous "characteristics." Hazardous characteristics include corrosivity, Extraction Procedure (EP) toxicity, reactivity, and ignitability. Characteristic hazardous wastes that are treated or diluted so that they no longer exhibit a hazardous characteristic are no longer subject to a SWDA Subtitle C permit or management standards.

On May 8, 1990, EPA promulgated regulations addressing characteristic wastes under the land disposal restrictions (LDR). In these regulations, EPA argued that it had authority to impose treatment requirements on certain classes of characteristic wastes at the "point of generation," even if the waste did not exhibit the requisite hazardous "characteristics" at the "point of disposal."

However, EPA took a different position with respect to the following two specific categories of characteristic wastes: (1) wastes in treatment systems ultimately regulated under the Clean Water Act; and (2) wastes disposed in Class I nonhazardous deep injection wells regulated under the Safe Drinking Water Act. For these wastes, EPA decided that, as long as the waste was nonhazardous at the point of land disposal, SWDA prohibitions on diluting the waste would not apply.

EPA also found that mixing of waste streams to eliminate the hazardous characteristic was generally appropriate for these two categories, and also found that application of the LDR provisions at the point of generation for deep wells would not further protect human health and the environment because deep well injection was as sound as the practice of pretreating the wastes. The Agency also stated that the treatment regime of the Clean Water Act, including the associated dilution rules, would be affected by administrative difficulties if additional treatment and dilution requirements under the SWDA land disposal restrictions were superimposed.

In *Chemical Waste Management* v. *EPA* 976 F.2d 2 (D.C. Cir. 1992), *cert. denied* 113 S.Ct. 1961 (1993), the court overturned EPA's approach with respect to nonhazardous waste disposed in injection wells and Clean Water Act treatment systems.

On March 2, 1992 (60 Fed. Reg. 11702-1176), EPA issued a notice of proposed rulemaking consistent with the court's mandate. According to this proposal, the cost of the proposed rule "could be as high as $1 million per affected facility" for facilities with wastewater treatment systems. For newly listed wastes, "the costs are substantially higher and will be incurred each year * * * [and]

range from approximately $11.9 million to $47.3 million.'' For these same facilities, ''[t]he Agency has estimated the benefits associated with today's rule to be small.'' For injection wells, the overall annual regulatory compliance cost will range between $486 million and $805 million. Yet EPA notes that ''[i]n general, potential health risks from Class I injection wells are extremely low.'' Section 2 of H.R. 2036 would, in effect, overturn the court decision by giving EPA the statutory authority to issue a rule based on its original approach.

### B. THE MUNICIPAL LANDFILL RULE

On October 9, 1991, EPA promulgated regulations to exempt certain small municipal solid waste landfills from ground water monitoring requirements. The intent of the exemption was to provide some relief for municipalities with little annual precipitation and a daily disposal rate of less than 20 tons of solid waste. In May 1993, the U.S. Circuit Court of Appeals for the District of Columbia Circuit in *Natural Resources Defense Council* v. *EPA* 992 F.2d 337 (D.C. Cir. 1993) overturned EPA's regulations. The court held that EPA was without authority to issue such an exemption for ground water monitoring. Section 3 of H.R. 2036 provides EPA authority for such an exemption.

### C. SUPPORT FOR LEGISLATION

H.R. 2036 is strongly supported by the Administration. The Association of State and Territorial Solid Waste Management Officials and the Ground Water Protection Council, an organization comprised of State ground water protection and underground injection control program administrators from forty States, are among other supporters of this legislation.

## HEARINGS

The Subcommittee on Commerce, Trade, and Hazardous Materials held a legislative hearing on H.R. 2036 on July 20, 1995. Testimony was received from the following nine witnesses: The Honorable Wes Cooley, Oregon 2nd District; Mr. Mike Shapiro, Office of Solid Waste, U.S. Environmental Protection Agency, accompanied by Mr. Myron Knudson, Director of Water Management Division, U.S. Environmental Protection Agency-Region VI; Ms. Catherine Sharp, Environmental Programs Administrator, Waste Management Division, Oklahoma Department of Environmental Quality; Mr. William West, Director of Environment, LTV Steel Company, representing American Iron and Steel and National Environmental Development Association; Mr. Don Clay, President, Don Clay Associates, Inc.; Mr. Dennis Redington, Director of Regulatory Management, Monsanto Company, representing Chemical Manufacturers Association; Mr. David Case, General Counsel, Environmental Technology Council; and Ms. Karen Florini, Senior Attorney, Environmental Defense Fund.

## COMMITTEE CONSIDERATION

On November 30, 1995, the Subcommittee on Commerce, Trade, and Hazardous Materials met in open markup session and ap-

proved H.R. 2036, as amended, for Full Committee consideration, by a voice vote. On December 21, 1995, the Full Committee met in open markup session and ordered H.R. 2036 reported to the House, as amended, by a voice vote, a quorum being present.

## ROLLCALL VOTES

Clause 2(l)2(B) of rule XI of the Rules of the House of Representatives requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto. There were no recorded votes taken in connection with ordering H.R. 2036 reported or in adopting the amendments. The voice votes taken in Committee are as follows:

*Voice Votes (December 21, 1995)*

Bill: H.R. 2036, Land Disposal Program Flexibility Act of 1995.

Amendment: Amendment by Mr. Oxley re: technical amendment to clarify that the bill does not affect the authority under any other Federal law.

Disposition: Agreed to, by a voice vote.

Amendment: Amendment by Mr. Pallone re: a three-year deadline and mandatory legal determination concerning wastes in treatment impoundments.

Disposition: Not agreed to, by a voice vote.

Amendment: Amendment by Mrs. Lincoln re: establishing a five-year deadline for study of wastes in treatment impoundments.

Disposition: Agreed to, by a voice vote.

Motion: Motion by Mr. Moorhead to order H.R. 2036, as amended, reported to the House.

Disposition: Agreed to, by a voice vote.

## COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee has held hearings and made findings that are reflected in this report.

## COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

Pursuant to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Reform and Oversight.

## NEW BUDGET AUTHORITY AND TAX EXPENDITURES

In compliance with clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives, the Committee states that H.R. 2036 would result in no new or increased budget authority or tax expenditures or revenues.

## COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 403 of the Congressional Budget Act of 1974.

## CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, following is the cost estimate provided by the Congressional Budget Office pursuant to section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
*Washington, DC, January 24, 1996.*

Hon. THOMAS J. BLILEY, Jr.,
*Chairman, Committee on Commerce,*
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 2036, the Land Disposal Program Flexibility Act of 1995, as ordered reported by the House Committee on Commerce on December 21, 1995. Depending on future appropriations action, enactment of this bill could result in some savings in administrative costs of the Environmental Protection Agency (EPA). The bill would eliminate the need to process certain waste discharge permit modifications and petitions from facilities seeking to be exempted from regulation. Based on information from EPA, CBO estimates that this change could reduce the agency's administrative costs by $2 million to $3 million annually beginning in fiscal year 1997. Enacting H.R. 2036 would not affect direct spending or receipts; therefore, pay-as-you-go provisions would not apply to the bill.

H.R. 2036 would amend the Solid Waste Disposal Act to exempt certain wastes from regulation under the act, and to make requirements for monitoring ground water inapplicable to certain small municipal solid waste facilities located in arid or remote regions.

Under the Solid Waste Disposal Act, EPA establishes land disposal restriction (LDR) treatment standards for hazardous wastes to minimize threats to human health and the environment. Hazardous wastes may not be disposed of on land unless they meet these levels. EPA plans to issue phase III LDR regulations in February, and phase IV regulations in June. Enacting H.R. 2036 would eliminate the requirement for EPA to issue significant portions of these rules, and facilities covered by these rules would not need to apply to agency for permit modifications and exemptions. As a result, EPA's administrative costs for implementing the rules would decline.

EPA plans to issue a final rule concerning alternatives to ground water monitoring at certain small landfills in arid or remote regions by October 1997. H.R. 2036 would exempt such facilities from any ground water monitoring requirements and eliminate the need for this rule. Administrative cost savings to EPA from eliminating this rule would not be significant because the proposed rule has already been published and most of the facilities that would be affected by this bill are regulated by states.

Estimated Impact on State, Local, and Tribal Governments. The bill would not impose any new intergovernmental mandates and would result in savings for about 700 local governments that operate small solid waste landfills in arid or remote regions. The bill would also likely reduce administrative costs for some state govern-

ments, but CBO does not expect that those savings would be significant.

The bill would give EPA the authority to exempt certain small municipal landfills from requirements for monitoring ground water. CBO expects that the agency would exercise this authority. Under current law, these landfills would have to begin monitoring ground water in October 1997. EPA is currently preparing a rule that would allow approved states and tribes to set alternative monitoring requirements for these landfills. Compliance with these alternative requirements would probably be less expensive than compliance with current rules in place for other landfills. Assuming that the alternative monitoring rule is finalized as planned, CBO estimates that this bill would save municipalities less than $5 million annually.

The bill would also produce some administrative savings for state governments that oversee these landfills on behalf of EPA. However, CBO does not expect that these savings would be very large, because many of these states would continue to enforce state requirements for those landfills.

Private Sector Mandates. This bill would impose no new private sector mandates, as defined in Public Law 104–4.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Kim Cawley and, for state and local government impacts, Pepper Santalucia.

Sincerely,

JUNE E. O'NEILL, *Director.*

## INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee finds that the bill would have no inflationary impact.

## ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

## SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

### SECTION 1. SHORT TITLE

The short title is the "Land Disposal Program Flexibility Act."

### SECTION 2. LAND DISPOSAL BAN

This section restores EPA's "Third Third" land disposal restrictions (LDR) rule (55 Fed. Reg. 22520 (June 1, 1990)), to the extent it was vacated or remanded by the D.C. Circuit in the *Chem Waste* decision (*Chemical Waste Management, Inc.* v. *EPA*, 976 F.2d 2 (D.C. Cir. 1992)). To accomplish its purposes, this section of the bill adds new paragraphs (7), (8) and (9) to section 3004(g) of SWDA.

*Paragraph (7).* This paragraph provides that land disposal treatment standards and prohibitions do not apply to decharacterized wastes that are managed in surface impoundments that engage in Clean Water Act-required treatment or its equivalent. Specifically, such wastes are exempted from LDRs when they are managed in

a treatment system that either (i) has a National Pollutant Discharge Eliminations System (NPDES) (or similar State) permit under section 402 of the Clean Water Act; (ii) treats the wastes to comply with pretreatment requirements under section 307 of that Act; or (iii) does not discharge at all (for example, systems that terminate in evaporation ponds), but which does engage in treatment equivalent to that required by the Clean Water Act for discharging systems. (Clean Water Act-equivalent treatment was explained by EPA in a May 24, 1993, Federal Register notice (58 Fed. Reg. 29864.))

To track the Third Third rule precisely, paragraph (7) also adds two further requirements. First, hazardous wastes that have had LDR treatment methods specified for them (for example, high total organic carbon (TOC) ignitible wastes) must first be subjected to that treatment method before they can be introduced into a surface impoundment. Second, hazardous wastes are ineligible if, when exposed to pH conditions between 2 and 12.5, they would generate toxic gases, vapors or fumes due to the presence of cyanide at the point of generation.

The Committee notes that in EPA's Third Third final rule, EPA promulgated a treatment standard of ''deactivation.'' For example, with respect to this standard as it applies to characteristic corrosive wastes, EPA stated: ''[t]his means that the facility may use any treatment (including neutralization achieved through mixing with other wastewaters * * * EPA has adopted this standard in part, to avoid the massive disruptions to wastewater treatment systems * * * '' (55 Fed. Reg. 22549)). Therefore, for this paragraph, the Committee notes that where ''deactivation'' is the treatment standard, the characteristic must be merely eliminated by any means, including aggregation of wastestreams for centralized treatment, as long as the aggregated wastestream no longer exhibits the characteristic prior to its placement in the impoundment.

*Paragraph (8).* This paragraph requires EPA to conduct a study to characterize the risks from air, ground water, or other pathways to human health or the environment posed by management of formerly hazardous wastes in treatment impoundments pursuant to paragraph (7). To the extent the study identifies any risks, it must also evaluate whether those risks are adequately addressed under existing Federal or State programs (other than the LDRs), such as Clean Air Act standards for wastewater management units, SWDA corrective action at hazardous waste treatment, storage and disposal facilities, or State nonhazardous waste management programs. If it finds risks to exist that are not adequately addressed, the study must further evaluate whether the risks could be better addressed under Federal programs other than the LDR program.

The Committee intends that EPA dedicate adequate resources and staffing to conduct a technically sound study in an expeditious manner. EPA's obligation to expeditiously complete a study is not to be confused with the five-year deadline contained in this paragraph. A deadline is merely a date which allows a lawsuit to be filed in order to obtain a court order forcing the EPA to do what it was otherwise required to do by Federal law. It is anticipated that EPA may complete the study in less than five years. The Com-

mittee intends that EPA commence the study within 60 days after enactment of this section.

If EPA concludes, based on the results of the study or other information that it receives after enactment of the bill, that any risks posed by management pursuant to paragraph (7) are adequately addressed under other Federal or State programs, it may defer to such other programs and not issue any new requirements. Alternatively, if EPA concludes that additional requirements may be necessary to protect human health and the environment, it may impose additional requirements including requirements under section 3004(g) and 3004(m)(1). Section 3004(m)(1) only applies to wastes that are otherwise subject to applicable prohibitions under section 3004(d), (e), (f) or (g). Accordingly, wastes not subject to the prohibitions in 3004(d), (e), (f) or (g) in any given circumstance would not be subject to any new requirements.

Nothing in this bill authorizes the Administrator to establish or enforce limitations on point source discharges subject to permits under section 402 of the Clean Water Act. In conducting the study under paragraph 8, the Administrator should consult with relevant Committees with respect to any recommendation regarding a specific statutory program under that Committee's jurisdiction.

*Paragraph (9).* This paragraph provides that land disposal treatment standards and prohibitions do not apply to characteristic wastes if they have been decharacterized at the point that they are injected into a Class I underground injection well regulated under the Safe Drinking Water Act.

### SECTION 3. GROUND WATER MONITORING

Section 3 of H.R. 2036 provides the statutory authority for an exemption for small municipal solid waste landfills that dispose of less than 20 tons of municipal solid waste daily, provided there is no evidence of ground water contamination from the municipal solid waste unit. The landfill must serve a community that either (1) experiences an annual interruption of at least three consecutive months of surface transportation that prevents access to a regional waste management facility; or (2) has no other waste management alternatives nearby and receives less than 25 inches of precipitation a year. Ground water resources may be subject to monitoring if a State determines that it is necessary to protect the ground water resources from contamination.

Section 3(b) reinstates the exemption as added by the final rule published at 56 Federal Register 50798 on October 9, 1991.

### SECTION 4. TECHNICAL CORRECTIONS TO SOLID WASTE DISPOSAL ACT

This section makes a number of technical corrections (such as proper spelling and numbering) and is not intended to change substantive policy in any manner.

## AGENCY VIEWS

JANUARY 26, 1996.

Hon. THOMAS J. BLILEY, Jr.,
*Chairman, Committee on Commerce,*
*House of Representatives, Washington, DC.*

DEAR CHAIRMAN BLILEY: We are writing to express the Administration's strong support for H.R. 2036, which addresses certain aspects of the land disposal restrictions now required under the Resource Conservation and Recovery Act (RCRA). Specifically, the bill would eliminate a mandate that the Environmental Protection Agency (EPA) promulgate stringent and costly treatment requirements for certain low-risk wastes that already are regulated in Clean Water Act or Safe Drinking Water Act units. The bill also improves municipal landfill groundwater monitoring provisions of the current law.

As you are aware, as part of the Administration's initiative for Reinventing Environmental Regulation, the President committed on March 16, 1995, to the consideration and development of targeted legislative amendments to provide appropriate regulatory relief under RCRA. The Administration initiated and convened an extensive outreach process to consider how best to proceed with narrowly crafted reforms limited to those RCRA provisions that currently result in high cost and little environmental benefit.

H.R. 2036 addresses one of the issues that the Administration identified during that process and that we are seeking to address in appropriate legislation. We appreciate your leadership, as well as that of Ranking Member Dingell, Subcommittee Chairman Oxley, and Congresswoman Lambert, in moving forward with separate legislation to address this issue outside the context of Superfund reauthorization. We also appreciate your receptiveness to concerns raised by the Administration, and we are especially pleased that amendments at subcommittee and full committee were limited to the narrow purpose of H.R. 2036: to provide needed regulatory relief while ensuring environmental protection.

The Commerce Committee's willingness to work with the Administration and the minority in a bipartisan spirit, and the consequent development of a narrowly tailored and balanced approach to this issue, commends this legislation for prompt action by the full House on the suspension calendar. We will continue to work with you and with other supporters to help ensure passage and enactment of the bill in its current form. We must emphasize, however, that the Administration will withdraw its support and strongly oppose H.R. 2036 if the bill is attached to a Superfund reform bill, or if it is amended to expand its scope or to alter the policies and approach presented in the current language.

The Office of Management and Budget advises that there is no objection to the submission of this report from the standpoint of the President's program.

Sincerely,

FRED HANSEN,
*Deputy Administrator,*
*Environmental Protection Agency.*

SALLY KATZEN,
*Administrator, Office of Management and Budget,*
*Office of Information and Regulatory Affairs.*
KATHLEEN A. MCGINTY,
*Chair, Council on Environmental Quality.*

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

**SOLID WASTE DISPOSAL ACT**

* * * * * * *

TITLE II—SOLID WASTE DISPOSAL

Subtitle A—General Provisions

SHORT TITLE AND TABLE OF CONTENTS

SEC. 1001. This title (hereinafter in this title referred to as "this Act"), together with the following table of contents, may be cited as the "Solid Waste Disposal Act":

* * * * * * *

Subtitle C—Hazardous Waste Management

* * * * * * *

IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

SEC. 3001. (a) * * *

* * * * * * *

(d) SMALL QUANTITY GENERATOR WASTE.—(1) * * *

* * * * * * *

(5) Until the effective date of standards required to be promulgated under paragraph (1), any hazardous waste identified or listed [under section 3001] *under this section* generated by any generator during any calendar month in a total quantity greater than one hundred kilograms but less than one thousand kilograms, which is not treated, stored, or disposed of at a hazardous waste treatment, storage, or disposal facility with a permit under section 3005, shall be disposed of only in a facility which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste.

* * * * * * *

STANDARDS APPLICABLE TO OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

SEC. 3004. (a) * * *

* * * * * * *

(g) ADDITIONAL LAND DISPOSAL PROHIBITION DETERMINATIONS.—(1) * * *

* * * * * * *

(5) Not later than the date specified in the schedule published under this subsection, the Administrator shall promulgate final regulations prohibiting one or more methods of land disposal of the hazardous wastes listed on such schedule except for methods of land disposal which the Administrator determines will be protective of human health and the environment for as long as the waste remains hazardous, taking into account the factors referred to in [subparagraph] *subparagraphs* (A) through (C) of subsection (d)(1). For the purposes of this paragraph, a method of land disposal may not be determined to be protective of human health and the environment (except with respect to a hazardous waste which has complied with the pretreatment regulations promulgated under subsection (m)) unless, upon application by an interested person, it has been demonstrated to the Administrator, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous.

* * * * * * *

*(7) Solid waste identified as hazardous based on one or more characteristics alone shall not be subject to this subsection, any prohibitions under subsection (d), (e), or (f), or any requirement (other than any applicable specific method of treatment) promulgated under subsection (m) if such waste—*

*(A)(i) is managed in a treatment system which subsequently discharges to waters of the United States pursuant to a permit issued under section 402 of the Clean Water Act (33 U.S.C. 1342); (ii) treated for the purposes of the pretreatment requirements of section 307 of the Clean Water Act (33 U.S.C. 1317); (iii) or managed in a zero discharge system that, prior to any permanent land disposal, engages in Clean Water Act-equivalent treatment as determined by the Administrator;*

*(B) no longer exhibits a hazardous characteristic prior to management in any land-based solid waste management unit;*

*(C) has met any applicable specific method of treatment promulgated by the Administrator under section 3004(m) (42 U.S.C. 6924(m)); and*

*(D) would not generate toxic gases, vapors, or fumes due to the presence of cyanide at the point of generation when exposed to pH conditions between 2 and 12.5.*

*(8) Not later than 5 years after the date of enactment of this paragraph, the Administrator shall complete a study of hazardous wastes managed pursuant to paragraph (7) to characterize the risks to human health or the environment associated with such management. In conducting the study, the Administrator shall evaluate the extent to which the risks are adequately addressed under existing State or Federal programs and whether unaddressed risks could be better addressed under such Federal laws or programs. Upon completion of such study or upon receipt of additional information, and as necessary to protect human health and the environment, the Administrator may, after notice and opportunity for comment, impose*

*additional requirements, including requirements under section 3004(m)(1) or defer management of such wastes to other State or Federal programs or authorities. Compliance with any treatment standards promulgated pursuant to section 3004(m)(1) may be determined either prior to management in, or after discharge from, a land-based unit as part of a treatment system specified in subparagraph (A) of paragraph (7). Nothing in this paragraph shall be construed to modify, supplement, or otherwise affect the application or authority of any other Federal law or the standards applicable under any other Federal law.*

*(9) Solid waste identified as hazardous based on one or more characteristics alone shall not be subject to this subsection, any prohibition under subsection (d), (e), or (f), or any requirement promulgated under subsection (m) of this section if the waste no longer exhibits a hazardous characteristic at the point of injection in any Class I injunction well regulated under section 1422 of title XIV of the Public Health Service Act (42 U.S.C. 300h–1).*

* * * * * * *

(q) HAZARDOUS WASTE USED AS FUEL.—(1) Not later than two years after the date of the enactment of the Hazardous and Solid Waste Amendments of 1984, and after notice and opportunity for public hearing, the Administrator shall promulgate regulations establishing such—

(A) * * *

* * * * * * *

(C) standards applicable to any person who distributes or markets any fuel which is produced as provided in subparagraph (A) or any fuel which otherwise contains any hazardous waste identified or listed under section 3001;

* * * * * * *

(r) LABELING.—(1) * * *

(2) Unless the Administrator determines otherwise as may be necessary to protect human health and the environment, this subsection shall not apply to fuels produced from petroleum refining waste containing oil if—

(A) * * *

* * * * * * *

(C) such refining waste containing oil is converted along with normal process streams into [pertroleum-derived] *petroleum-derived* fuel products at a facility at which crude oil is refined into petroleum products and which is classified as a number SIC 2911 facility under the Office of Management and Budget Standard Industrial Classification Manual.

(3) Unless the Administrator determines otherwise as may be necessary to protect human health and the environment, this subsection shall not apply to fuels produced from oily materials, resulting from normal petroleum refining, production and transportation practices, if (A) contaminants are removed; and (B) such oily materials are converted along with normal process streams into petroleum-derived fuel products at a facility at which crude oil is refined into petroleum products and which is classified as a number SIC

2911 facility under the Office of Management and Budget Standard *Industrial* Classification Manual.

* * * * * * *

PERMITS FOR TREATMENT, STORAGE, OR DISPOSAL OF HAZARDOUS WASTE

SEC. 3005. (a) PERMIT REQUIREMENTS.—Not later than eighteen months after the date of the enactment of this section, the Administrator shall promulgate regulations requiring each person owning or operating an existing facility or planning to construct a new facility for the treatment, storage, or disposal of hazardous waste identified or listed under this subtitle to have a permit issued pursuant to this section. Such regulations shall take effect on the date provided in section 3010 and upon and after such date the treatment, storage, or disposal of any such hazardous waste and the construction of any new facility for the treatment, storage, or disposal of any such hazardous waste is prohibited except in accordance with such a permit. No permit shall be required under this section in order to construct a facility if such facility is constructed pursuant to an approval issued by the Administrator under section 6(e) of the Toxic Substances Control Act for the incineration of [polycholorinated] *polychlorinated* biphenyls and any person owning or operating such a facility may, at any time after operation or construction of such facility has begun, file an application for a permit pursuant to this section authorizing such facility to incinerate hazardous waste identified or listed under this subtitle.

* * * * * * *

(e) INTERIM STATUS.—(1) Any person who—

(A) * * *

* * * * * * *

(C) has made an application for a permit under this section, shall be treated as having been issued such permit until such time as final administrative disposition of such application is made, unless the Administrator or other plaintiff proves that final administrative disposition of such application has not been made because of the failure of the applicant to furnish information reasonably required or requested in order to process the application. This paragraph shall not apply to any facility which has been previously denied a permit under this section or if authority to operate the facility under this section has been previously terminated.

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Subtitle D—State or Regional Solid Waste Plans

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APPROVAL OF STATE PLAN; FEDERAL ASSISTANCE

SEC. 4007. (a) PLAN APPROVAL.—The Administrator shall, within six months after a State plan has been submitted for approval, approve or disapprove the plan. The Administrator shall approve a plan if he determines that—

(1) it meets the requirements of paragraphs (1), (2), (3), and (5) of section [4003] *4003(a)*; and

(2) it contains provision for revision of such plan, after notice and public hearing, whenever the Administrator, by regulation, determines—

(A) that revised regulations respecting minimum requirements have been promulgated under paragraphs (1), (2), (3), and (5) of section [4003] *4003(a)* with which the State plan is not in compliance;

(B) that information has become available which demonstrates the inadequacy of the plan to effectuate the purposes of this subtitle; or

(C) that such revision is otherwise necessary.

The Administrator shall review approved plans from time to time and if he determines that revision or corrections are necessary to bring such plan into compliance with the minimum requirements promulgated under section 4003 (including new or revised requirements), he shall, after notice and opportunity for public hearing, withdraw his approval of such plan. Such withdrawal of approval shall cease to be effective upon the Administrator's determination that such complies with such minimum requirements.

* * * * * * *

ADEQUACY OF CERTAIN GUIDELINES AND CRITERIA

SEC. 4010. (a) * * *

* * * * * * *

(c) REVISIONS OF GUIDELINES AND [CRITERIA.—Not later] *CRITERIA.—*

*(1) IN GENERAL.—Not later* than March 31, 1988, the Administrator shall promulgate revisions of the criteria promulgated under paragraph (1) of section 4004(a) and under section 1008(a)(3) for facilities that may receive hazardous household wastes or hazardous wastes from small quantity generators under section 3001(d). The criteria shall be those necessary to protect human health and the environment and may take into account the practicable capability of such facilities. At a minimum such revisions for facilities potentially receiving such wastes should require ground water monitoring as necessary to detect contamination, establish criteria for the acceptable location of new or existing facilities, and provide for corrective action as appropriate.

*(2) ADDITIONAL REVISIONS.—Subject to paragraph (3), the requirements of the criteria described in paragraph (1) relating to ground water monitoring shall not apply to an owner or operator of a new municipal solid waste landfill unit, an existing municipal solid waste landfill unit, or a lateral expansion of a municipal solid waste landfill unit, that disposes of less than 20 tons of municipal solid waste daily, based on an annual average, if—*

*(A) there is no evidence of ground water contamination from the municipal solid waste landfill unit or expansion; and*

*(B) the municipal solid waste landfill unit or expansion serves—*

*(i) a community that experiences an annual interruption of at least 3 consecutive months of surface transportation that prevents access to a regional waste management facility; or*

*(ii) a community that has no practicable waste management alternative and the landfill unit is located in an area that annually receives less than or equal to 25 inches of precipitation.*

*(3) PROTECTION OF GROUND WATER RESOURCES.—*

*(A) MONITORING REQUIREMENT.—A State may require ground water monitoring of a solid waste landfill unit that would otherwise be exempt under paragraph (2) if necessary to protect ground water resources and ensure compliance with a State ground water protection plan, where applicable.*

*(B) METHODS.—If a State requires ground water monitoring of a solid waste landfill unit under subparagraph (A), the State may allow the use of a method other than the use of ground water monitoring wells to detect a release of contamination from the unit.*

*(C) CORRECTIVE ACTION.—If a State finds a release from a solid waste landfill unit, the State shall require corrective action as appropriate.*

*(4) NO-MIGRATION EXEMPTION.—*

*(A) IN GENERAL.—Ground water monitoring requirements may be suspended by the Director of an approved State for a landfill operator if the operator demonstrates that there is no potential for migration of hazardous constituents from the unit to the uppermost aquifer during the active life of the unit and the post-closure care period.*

*(B) CERTIFICATION.—A demonstration under subparagraph (A) shall be certified by a qualified ground-water scientist and approved by the Director of an approved State.*

*(C) GUIDANCE.—Not later than 6 months after the date of enactment of this paragraph, the Administrator shall issue a guidance document to facilitate small community use of the no migration exemption under this paragraph.*

* * * * * * *

## DISSENTING VIEWS

We can all support the goal of eliminating unnecessary or duplicative environmental regulations, provided the remaining regulations are sufficient to protect public health and the environment. H.R. 2036 would exempt surface impoundments managing hazardous waste from regulation under the Resource Conservation and Recovery Act (RCRA) without first assuring that other environmental regulations are sufficient to do the job.

Currently, there are no federal regulations at all that address risks to groundwater from the surface impoundments exempted from RCRA regulation by this legislation. In many instances these impoundments are nothing more than unlined, unmonitored pits. While releases to surface water from these impoundments are covered by the Clean Water Act, leaks to groundwater from impoundments are entirely beyond the scope of the Clean Water Act.

Despite EPA's belief that this is a low-risk situation, their preliminary analysis of the available data tells a very different story. Specifically, EPA found "potentially significant health risks" for several industrial sectors. In one particular industrial sector, half of EPA's wastewater samples would pose cancer risks in the 1-in-1,000 to 1-in-100,000 risk range if they leaked from a surface impoundment. Similarly, in another sector, 40% of the wastewater samples posed cancer risks of this magnitude. EPA has never satisfactorily explained the substantial disparity between these data and its conclusion that this is a low priority problem.

We are aware that EPA regards the current data as limited in scope and potentially outdated. We do not oppose providing the agency with a reasonable period of time to collect and assess additional data. However, we believe that the five year period adopted by the Committee is unreasonably long. Based upon our discussions with EPA officials, it is not clear why the Agency could not complete this task within three years. Clearly, EPA already possesses the rudimentary data and analytical framework necessary to undertake this study. EPA now simply needs to obtain updated readings—data that should already be in industry's possession—and revise its existing analysis accordingly. No new models are needed. Accordingly EPA should be able to meet a three year deadline without having to turn the study into a rushed project that interferes with other EPA priorities.

At the very least, it should be made clear to the Agency that the five year period described in the bill extends no further than five years from the date of enactment of the legislation. Given EPA's support for the study enumerated in this legislation, the Agency should begin its study immediately and complete its investigations as soon as possible.

As part of its investigations, EPA should also determine whether the releases of hazardous constituents from any of these surface

impoundments into the air or groundwater or discharge from these impoundments poses a threat to public health and the environment sufficient to warrant additional regulation under RCRA or other environmental laws.

In addition to moving swiftly forward to investigate potential risks, we believe that the Agency should finally decide, on the weight on this scientific study, whether or not to proceed with new regulation of any of these surface impoundments. It is troubling that the bill's proponents, who assume that these impoundments do not present a significant risk, lack the courage of their convictions. Why shouldn't EPA have to inform the public, and Congress, of the conclusions it draws from the study? And, if risks are found, why shouldn't there be a time frame for addressing them? If industry and EPA are correct and there are no such risks, then they should be indifferent to whether there is a deadline for final rules, since such rules will be shown to be unnecessary.

In truth, no one knows for certain whether surface impoundments pose a danger. The only way anyone will know the answer is if the Agency is directed to perform the study proposed in this legislation in a timely fashion and then make a determination based on its findings. It is imperative that the Agency expeditiously reach a sound conclusion based on the weight of the scientific evidence and not conjecture. Are these surface impoundments a danger that require regulation: yes or no?

In short, we believe that the amendment offered by Mr. Pallone would have greatly strengthened this bill by requiring EPA to reach a decision within three years. Without its inclusion, the legislation lacks not only a reasonable time period for EPA to complete its study, but also a sensible requirement that EPA reach a decision to act—or not act—based upon any risks identified in the study. We, therefore, find the bill to be unacceptable in its current form.

ED MARKEY.
RON WYDEN.
FRANK PALLONE, Jr.
ELIZABETH FURSE.
BOBBY L. RUSH.

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